IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

DR. DAVID BRUCE ALLEN PLAINTIFF

VERSUS CIVIL ACTION NO. 1:12cv00057-HSO-RHW

JACKSON COUNTY, MISSISSIPPI,
By and through its Board of Supervisors, in their official and Individual Capacities; JACKSON COUNTY SHERIFF'S DEPARTMENT; SHERIFF MIKE BYRD, in his official and individual capacities; JACKSON COUNTY NARCOTICS TASK FORCE; and OTHER UNKNOWN JOHN AND JANE DOES, A-Z, also in their official and individual capacities DEFENDANTS

DEFENDANT MIKE BYRD'S RESPONSE
TO PLAINTIFF'S MOTION TO REOPEN DISCOVERY

COMES NOW the Defendant Mike Byrd, in his individual capacity, by and through his attorneys herein, and files this his Response to Plaintiff's Motion to Reopen Discovery, as follows:

To date, the only discovery that has been allowed is that relating to qualified immunity issues. Following the filing of Defendant's Answer in which Defendant Byrd raised the defense of qualified immunity, the Court held a conference on April 8, 2013, and thereafter entered an Order setting the deadline for Qualified Immunity discovery as July 1, 2013, with the Qualified Immunity motion(s) being due on July 15, 2013. *See* Text Only Amended Scheduling Order entered on April 8, 2013. Defendant Byrd, through his counsel, promptly propounded Interrogatories to the Plaintiff on April 10, 2013.

On May 9, 2013, Plaintiff filed a Motion [16]for Extension of Time to Respond to Defendant Byrd's Interrogatories, and was granted until May 20, 2013, in which to do so. *See*

Text Only Order of May 13, 2013, granting Plaintiff's Motion [16] for Extension of Time. On May 20, Plaintiff filed another Motion [17]for Extension of Time to Respond, which was granted, and he submitted his answers on May 22, 2013.

On June 13, 2013, Plaintiff filed a Motion [19]to Extend Qualified Immunity Deadlines until August 1 for discovery and August 15 for motions, which was granted. *See* Text Only Order entered June 14, 2013, granting [19] Motion to Extend Qualified Immunity Discovery and Motions Deadline. On July 30, 2013, Plaintiff filed a second Motion [25]to Extend Qualified Immunity Discovery Deadlines, claiming the Plaintiff had "reconnected with a prior witness who had boxes of apparently/potentially relevant documents," and that Plaintiff had also "developed significant witness information that in all fairness, needs to be delivered to the Defendant." *See* Plaintiff's second Motion [25]to Extend Qualified Immunity Discovery Deadlines. The Court again granted the Plaintiff's motion, extending the time to complete discovery on qualified immunity issues until August 15, 2013, and the time to file qualified immunity motions to August 29, 2013. The Plaintiff never submitted any written discovery requests to the Defendant, never identified the "witnesses" referred to in his second Motion [25] to Extend Qualified Immunity Discovery Deadlines, and never produced any documents, much less "boxes of apparently/potentially relevant documents."

On January 9, 2014, the Plaintiff filed a Motion [35] to Reopen Discovery. In his motion, the Plaintiff makes nebulous claims that discovery should be reopened "to allow the *possibility* of additional witnesses with *significant information* may (sic) come forward with the truth without the fear of threats and intimidation." *See* Plaintiff's Motion [35] to Reopen Discovery, ¶3 (emphasis added). The Plaintiff offers no identification of any such witnesses or information, and offers no explanation as to how reopening discovery might impact the qualified immunity issue, which is the only thing before the Court at this time. It is totally unclear what the Plaintiff hopes to accomplish by reopening discovery on qualified immunity other than to continue delaying the matter.

The Plaintiff has offered no specific information that would justify reopening discovery in this case. During the approximate four month period the Court allowed for discovery, the Plaintiff conducted two depositions, and never propounded any written discovery. The Plaintiff claimed to have witnesses and "boxes" of documents that needed to be provided to the Defendants, but he never produced the witness's names or any documents. The time to conduct discovery on qualified immunity in this case expired in August of last year, and the Plaintiff has wholly failed to show any good reason for the Court to reopen discovery.

WHEREFORE, PREMISES CONSIDERED, Defendant Mike Byrd respectfully requests the Court deny the Plaintiff's Motion to Reopen Discovery in this matter.

Respectfully submitted, this the 15th day of January, 2014.

SHERIFF MIKE BYRD, in his individual capacity

s/Jackye C. Bertucci
Jackye C. Bertucci
Special Counsel

CERTIFICATE OF SERVICE

I, Jackye C. Bertucci, hereby certify that on this date I electronically filed the foregoing *Defendant Mike Byrd's Response to Plaintiff's Motion to Reopen Discovery* with the Clerk of the Court using the ECF system which sent notification of such filing to Michael W. Crosby, Esq., at michaelwcrosby@bellsouth.net.

This the 15th day of January, 2014.

s/Jackye C. Bertucci
Jackye C. Bertucci
Special Counsel

Jackye C. Bertucci (MSB #9851)
Gary S. Evans (MSB#5261)
Office of the Board Attorney
Post Office Box 998
Pascagoula, MS 39568-0998
Telephone: (228) 769-3371
Facsimile: (228) 769-3119
jbertucci@jcboardatty.com